

46 Am. Jur. 2d Judges § 120

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

3. Relationship as Grounds for Disqualification

b. Relationship to Attorneys

§ 120. Judge's relationship to attorneys as grounds for disqualification, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  46

A.L.R. Library

[Judge's previous legal association with attorney connected to current case as warranting disqualification, 85 A.L.R.4th 700](#)

[Relationship to attorney as disqualifying judge, 50 A.L.R.2d 143](#)

[Disqualification of federal judge, under 28 U.S.C.A. sec. 455\(b\)\(5\)\(ii\), on ground that judge's relative is acting as lawyer in proceeding, 73 A.L.R. Fed. 879](#)

Forms

Forms relating to disqualification of judge for relationship, generally, see Am. Jur. Pleading and Practice Forms, Judges
[\[Westlaw®\(r\) Search Query\]](#)

In some jurisdictions, statutes specifically provide for the disqualification of a judge by reason of his or her relationship to an attorney in the case before the judge, as, for example, for the relationship to an attorney by consanguinity or affinity within

the third degree.¹ The Code of Judicial Conduct provides that a judge should disqualify him- or herself in a proceeding where the judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them or the spouse or domestic partner of such a person, is acting as a lawyer in the proceeding.² The federal statute regarding the disqualification of judges similarly requires disqualification where the judge or his or spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.³

Observation:

The phrase "acting as a lawyer in the proceeding" focuses on the participation of the lawyer in the proceeding before the judge and is not limited to cases where the lawyer has formally appeared.⁴

Comment:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under the Rule, or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under the Rule, the judge's disqualification is required.⁵

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Tillman v. State](#), 44 So. 2d 644 (Fla. 1950); [Hoff v. Eighth Judicial Dist. Court In and For Clark County](#), 79 Nev. 108, 378 P.2d 977 (1963).

As to statutes requiring that the attorney be "of record" or "engaged" in the case, see § 121.

² A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(2)(b).

³ 28 U.S.C.A. § 455(b)(5)(ii).

A district judge was required to disqualify himself, under the statute mandating disqualification when the judge or his spouse or a person within the third degree of relationship to either of them was acting as a lawyer in the proceeding before the judge, in a bench trial for a personal injury action, where one of the attorneys in the law firm representing the plaintiff at the trial was the district judge's brother-in-law, and the brother-in-law acted as a lawyer for the plaintiff, by communicating with an expert witness, after the lawsuit was filed. [Mangini v. U.S.](#), 314 F.3d 1158 (9th Cir. 2003), opinion amended on other grounds on denial of reh'g, 319 F.3d 1079 (9th Cir. 2003).

The son of a judge, who had assisted with a criminal prosecution as a supervised third-year law student, was acting as a lawyer in the proceeding for purposes of a statute governing the mandatory recusal of judges; while the son was not technically a "lawyer" at the time of participation, he bore the same ethical responsibilities to the client and the court that a full-fledged member of the bar would have. [Matter of Hatcher](#), 150 F.3d 631 (7th Cir. 1998).

As to the interest of relatives under 28 U.S.C.A. § 455(b)(5), generally, see [Am. Jur. 2d, Federal Courts](#) §§ 101, 102.

4 [Holloway v. Hopper](#), 1993 OK 56, 852 P.2d 711 (Okla. 1993) (where a judge's wife was consulted regarding a divorce settlement, and gave legal advice concerning a case pending before the judge, the wife's participation in the proceeding required disqualification of the judge, even though neither the wife nor her firm entered an appearance in the case).

5 Comment 4 to A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.